August 5, 2024

OFFICE OF THE HEARING EXAMINER
KING COUNTY, WASHINGTON
Telephone (206) 477-0860
hearingexaminer@kingcounty.gov
www.kingcounty.gov/independent/hearing-examiner

ORDER OF DISMISSAL

SUBJECT: Department of Local Services file no. **ENFR240017**

PREMIER LAND LLC
Code Enforcement Appeal

Location: [redacted] Duvall

Appellant: Premier Land LLC
represented by **Andrew Weiss**
[redacted]
Duvall, WA 98019
Telephone: [redacted]
Email: [redacted]

King County: Department of Local Services
represented by **Ben Hossienzadeh**
Department of Local Services
919 SW Grady Way Suite 300
Renton, WA 98057
Telephone: (206) 263-2196
Email: bhossienzadeh@kingcounty.gov

On April 25, 2024, the Department of Local Services (Local Services) issued a notice and order. As that document stated, Local Services had to receive an appeal by May 20, 2024, or else the notice and order would become a final determination.

> **APPEAL (Including KCC Chapter 23.36)**
> Any person named in the Notice and Order or having any record or equitable title in the property against which the Notice and Order is recorded may appeal the order to the Hearing Examiner of King County. A statement of appeal must be received in writing by DLS Permits within twenty-four (24) days **by May 20, 2024** of the date of issuance of the Notice and Order. A statement of appeal form is included in this packet. You are not required to use the enclosed form. FAILURE TO APPEAL WITH THE SPECIFIC REASONS WHY THE NOTICE AND ORDER SHOULD BE REVERSED OR MODIFIED MAY RESULT IN A MOTION TO HAVE THE APPEAL DISMISSED BY THE HEARING EXAMINER. FAILURE TO FILE A TIMELY STATEMENT OF APPEAL WITHIN THE DEADLINES SET FORTH ABOVE RENDERS THE NOTICE AND ORDER A FINAL DETERMINATION THAT THE CONDITIONS DESCRIBED IN THE NOTICE AND ORDER EXISTED AND CONSTITUTED A CIVIL CODE VIOLATION, AND THAT THE NAMED PARTY IS LIABLE AS PERSON RESPONSIBLE FOR CODE COMPLIANCE.

That was consistent with KCC 20.22.080.B, which requires appeals to be received within 24 days of the date the agency determination is issued.

Appellants postmarked their appeal on May 22, and Local Services received the appeal on May 28. Local Services filed a motion to dismiss the appeal as untimely

In many scenarios, an examiner has a fair amount of discretion and flexibility. For example, if an appeal is timely but inadequate in content, an examiner "may" dismiss the appeal, but alternatively "may" allow a party to clarify the appeal issues. KCC 20.22.090.B. Requiring clarification, instead of dismissal, is almost always the approach we choose in such a scenario. We would do so here if *content* were the shortcoming in this appeal. However, untimely appeal statements are decidedly different. The examiner "shall" (not "may") dismiss an untimely appeal. KCC 20.22.090.A.

We have tried to avoid just the scenario presented today by writing (emphasis in original) in our *Hearing Examiner Guide: Title 23 Code Enforcement Appeals*, a guide Local Services includes in its notices and orders:

> Getting your appeal statement to a post office by the deadline is *not* sufficient. [Local Services] must actually *receive* your appeal by the deadline (and mail delivery often takes several days). Untimely appeals are barred—there is no flexibility. This may not seem fair, but it is the law….
>
> … If you are not sure about exactly what to say, make sure you still get *an* appeal, even if imperfect, delivered to [Local Services]by the deadline.
>
> If you get your initial appeal to [Local Services] on time, the examiner has authority to later allow you, prior to the hearing, to modify or add to the issues you originally raised. But the examiner has *no* authority to hear an appeal if your original appeal statement did not arrive at DLSP on time. **Whatever you do, make sure the agency receives your appeal by the deadline!**

Unfortunately, that did not happen here. And as KCC 20.22.080.H. states, where:

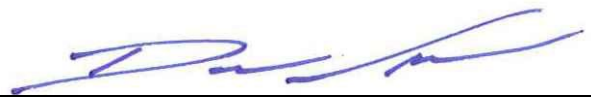
> a person fails to timely deliver the appeal statement[, the] examiner does not have jurisdiction to consider the appeal and the decision of the department … becomes final and unreviewable.

However, a straight dismissal would leave both parties guessing. The April 25 notice and order gave Appellants a month (until May 27) to take care of the vehicles, rubbish, and occupied RV, and to submit a prescreening meeting request to start the clearing/grading process. It noted that the failure to comply with those deadlines could lead to specified civil penalty. And by now we are two months past those deadlines. We will thus push out those May 27 deadlines until a month from *today's* order.

The appeal is accordingly DISMISSED, except that the May 27 deadlines listed in the notice and order are extended to **September 5, 2024**.

The appeal is accordingly DISMISSED.

DATED August 5, 2024.



David Spohr
Hearing Examiner

NOTICE OF RIGHT TO APPEAL

King County Code 20.22.040 directs the Examiner to make the County's final decision for this type of case. This decision shall be final and conclusive unless proceedings for review of the decision are timely and properly commenced in superior court. Appeals are governed by the Land Use Petition Act, Chapter 36.70C RCW.

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CERTIFICATE OF SERVICE

SUBJECT: Department of Local Services file no. **ENFR240017**

PREMIER LAND LLC
Code Enforcement Appeal

I, Lauren Olson, certify under penalty of perjury under the laws of the State of Washington that I transmitted the **ORDER OF DISMISSAL** to those listed on the attached page as follows:

☒ EMAILED to all County staff listed as parties/interested persons and parties with e-mail addresses on record.

☒ placed with the United States Postal Service, through Quadient-Impress, with sufficient postage, as FIRST CLASS MAIL in an envelope addressed to the non-County employee parties/interested persons to addresses on record.

DATED August 5, 2024.

Lauren Olson

Lauren Olson
Legislative Secretary

Campbell, Thomas
Department of Local Services

Fairbanks, John
Department of Local Services

Hossienzadeh, Ben
Department of Local Services

Premier Land LLC
Hardcopy

Weiss, Andrew
Hardcopy

Whalen, LaDonna
Department of Local Services